

U.S. attorney: Milian evidence is unconvincing

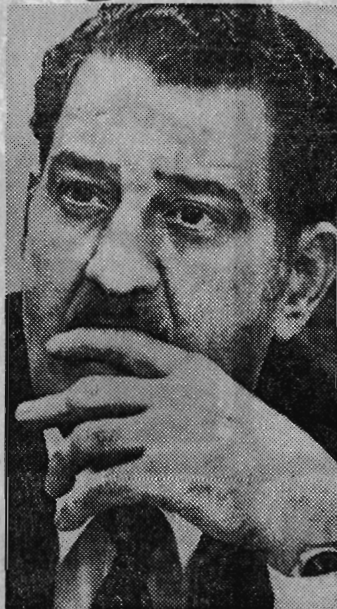
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To The Editor:

On Sept. 17, *The Miami Herald* editorialized against the dismissal by the United States attorney of an indictment that charged Gaspar Jimenez and Gustavo Castillo with the commission of a heinous act of terrorism, the planting of a car bomb that destroyed the legs of journalist Emilio Milian seven years ago. In its editorial, *The Herald* reviewed some of the reasons why the cases against Jimenez and Castillo — tenuous cases from the start — had become so weak in the years preceding the defendants' return to Florida that, in the judgment of the U.S. attorney, justice required their dismissal.

Indeed, the editorial apparently concurred in my judgment that the case against Castillo was no case at all, given the fatal shooting of the single witness — Ricardo "Monkey" Morales — whose testimony might have indirectly linked Castillo to this cowardly bombing.

As to the case against Gaspar Jimenez, *The Herald* came to a different conclusion. Notwithstanding *The Herald's* accurate account that this case was based entirely upon the testimony of a single witness — who was a convicted felon, an admitted perjurer, and a known antagonist of Jimenez — *The Herald* concluded that "justice requires that this case be put to a jury." Indeed *The Herald* went so far as to suggest that dismissal of these



Emilio Milian

grave charges were motivated merely by "legal facility."

By suggesting that so weak a case be sent to a jury, *The Herald* seems to lose sight of the standard of guilt axiomatic to our criminal-justice system — guilt beyond a reasonable doubt — and seems to lose sight as well of the fundamental prosecutorial obligation to assure that this standard is maintained. *The Herald's* view amounts to no less than the sug-

gestion that the U. S. attorney attempt to present to a jury a case about which he himself has a very serious doubt as to the guilt of the defendant, perhaps in the hope that a jury, either out of ignorance, prejudice, or confusion, will hand up a conviction based on something substantially less than guilt beyond a reasonable doubt.

Indeed, four veteran prosecutors carefully reviewed this case, and all concluded that there was necessarily serious and substantial doubt as to the guilt of this defendant. Under these circumstances, for a prosecutor to ask a jury to come to a conclusion that he cannot in good faith come to himself would be a disgrace reminiscent of the worst abuses of criminal process.

The thought that the people, whoever they are, responsible for this horrible crime have gotten away with it, is one which should enrage every decent person. But if that rage were to be translated into a willingness to see people prosecuted on evidence that

doesn't remotely rise to the level of a clear case against them, then terrorism and the hysteria it is intended to generate will have scored a tremendous victory against the rule of law.

A prosecutor's commitment to be bound by the framework of fundamental fair play and justice must be as unshakeable as his commitment to prosecute crime as vigorously and relentlessly as he can.

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